IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Summons for Judgment No.158 of 2007
in
Summary Suit No. 3608 of 2004

1. Asia Today Limited
and another ..Plaintiffs

vs.

1. J.H.Kanani and anr. ..Defendnats

Mr.Simil Purohit with Mr.Dinesh Chemburwala i/b
Mr.A.T.Agarwal for plaintiffs.
Mr.R.V.Govilkar for defendants.

CORAM: S.C.DHARMADHIKARI J.
31st July, 2007

P.C.

1. This summons for judgment has been taken out by the plaintiffs for judgment in their favour and as against the defendant no.1.

2. The submission of Mr.Purohit is that defendant no.1 is the Advertising agency which has booked advertisements for and on behalf of defendant no.2. He submits that the terms and conditions as also the agreement together with its clauses would show that the liability is also that of defendant no.1. He submits that the suit is maintainable in sofar as first defendant in the light of release orders and invoices which together constitute the written contract. He submits that there is no denial of fact that advertisements were booked through defendant no.1 and it

is false to urge that the first defendant is not in any manner liable.

3. Mr.Govilkar on the other hand has invited my attention to the affidavit filed in reply and sur rejoinder. He submits that the liability has been all through out denied. There is absolutely nothing on record which would indicate that defendant no.1 is liable. In any event, there is misjoinder of parties in as much as the sole proprietorship is not that of Jayesh H.Kanani but his wife. In such circumstances, the liability cannot be foisted on the first defendant.

4. Assuming, without admitting, that there is any privity between the plaintiffs and defendant no.1, yet, it is clear from the plaint averments and other documents that primary liability is that of defendant no.2. The agent of second defendant who was receiving the commission for having booked the advertisements for and on behalf of the second defendant can in no way be held liable.

5. With the assistance of Mr.Purohit and Mr.Gowilkar, I have perused the plaint and annexures thereto, reply, rejoinder and sur rejoinder. From a perusal thereof, I am satisfied that triable issues would arise in so far as the claim of the plaintiffs as against first defendant is concerned. Considering that the plaintiffs have filed the

suit against the agency so also the manufacturer for recovery of advertising charges but it is doubtful as to whether there is any privity between the plaintiffs and defendant no.1 considering that even the execution of the documents is denied and liability thereunder disputed the issues which would arise would necessitate oral and documentary evidence being led. This is not a case where the issues can be gone into and decided on the basis of the affidavits alone. Unconditional leave is, therefore, granted to the first defendant and the suit is transferred to list of commercial causes only in so far as first defendant is concerned. Usual directions to file written statement, discovery and inspection of the documents. At the request of Mr.Purohit, original documents compiled by the plaintiffs are allowed to be taken back after the same are replaced by photo copies thereof duly authenticated as true copies by the Advocate.

(S.C.DHARMADHIKARI J.)